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LAWS

OF THE

STATE OF NEW-YORK,

PASSED AT THE

FIFTY-FIFTH SESSION

OF THE

LEGISLATURE,

BEGUN AND HELD AT THE CITY OF ALBANY,

THE THIRD DAY OF JANUARY, 1832.



MAR 21 1832

ALBANY: University of the State

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FOR

WM. & A. GOULD & CO. ALBANY,

AND

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.....

1832.

and limited in the second article of the second title of the third chapter of the third part of the Revised Statutes.

§ 2. This act shall be in force and take effect immediately after its passage.

CHAP. 179.

AN ACT to incorporate the City of Buffalo.

Passed April 20, 1832.

The People of the State of New-York, represented in Senate and Assembly, do enact as follows :

§ 1. The district of country in the county of Erie within the following bounds, that is to say : Beginning at a point in the west bounds of the state, due west from the southwesterly termination of York-street; thence to the northwesterly line of said York-street at its southwesterly termination; thence along the northwesterly bounds of York-street to the northwesterly side of the Guide Board road; thence easterly along the northerly bounds of said road to the westerly line of lot number twenty-two, in the eleventh township and eighth range; thence southerly along the west bounds of lot number twenty-two and part of lot number sixteen, in said township and range to the easterly termination of the north line of Eagle-street; thence easterly along a line which would be a continuation of the north line of Eagle-street to the Buffalo Creek Reservation; thence southwesterly along the line of said reservation to the south bank of Big Buffalo Creek; thence down the south bank of said creek to the northeasterly corner of a piece of land called the Gore; thence along the northwesterly bounds of said Gore to Lake Erie; thence due west to the state line; thence northerly to the place of beginning: shall hereafter be known by the name of the city of Buffalo.

Bounds of the city.

§ 2. The inhabitants of said city shall be a corporation by the name of the "City of Buffalo," and may sue and be sued, complain and defend, in any court; make and use a common seal, and alter it at pleasure; and take, hold, purchase and convey, such real and personal estate, as the purposes of the corporation may require.

Corporation created.

§ 3. The said city shall be divided into five wards as follows, to wit: all that part of the city which lies south and east of the following lines, to wit:

Five wards.

1. Beginning at a point in the said reservation, where a line drawn through the centre of Crow-street would strike said reservation; thence along said line to the centre of Crow-street; thence proceeding westwardly along the centre of said street

First.

to Cazenovia Terrace ; thence to the centre of Cazenovia Terrace ; thence westerly and northerly along the centre of said Terrace to the centre of Erie-street ; thence along the centre of Erie-street to the centre of the Erie canal ; thence along the centre of the canal to the west bounds of York-street ; thence down the west bounds of York-street to lake Erie ; thence due west to the state line, shall be denominated the first ward of said city :

Second.

2. All that part of the said city which lies east of the centre of Main-street, and north of the centre of Crow-street, and north of a line drawn through the centre of Crow-street, to the said Reservation, and south of the centre of Eagle-street, and south of a line to be drawn in continuation of the north line of Eagle-street to the Buffalo Creek Reservation, shall be denominated the second ward of said city :

Third.

3. All that part of said city, lying westerly of the centre of Main-street, and northeasterly of the bounds of the first ward, and southeasterly of the northwesterly bounds of said York-street, and southwesterly of the centre of Niagara-street, shall be denominated the third ward of said city :

Fourth.

4. All the residue of said city lying east of the centre of Main-street and north of the centre of Eagle-street, shall be denominated the fourth ward of said city :

Fifth.

5. All the residue of said city lying west of the centre of Main-street and northeasterly of the centre of Niagara-street, shall be denominated the fifth ward of said city.

Officers.

§ 4. There shall be in and for said city, one mayor, ten aldermen, one clerk, one treasurer, one or more collectors, five assessors, and such other officers as are hereinafter authorised to be appointed. Which mayor, aldermen, and assessors shall be freeholders in said city.

Annual election.

§ 5. An election shall be held in each of the wards of said city on the first Tuesday in March, in each year, (after the year eighteen hundred and thirty-two,) at such place as the common council of said city shall appoint, and of which six days previous public notice shall be given in writing, in three public places in each ward, by the inspectors thereof.

Aldermen and assessors.

§ 6. At the first election under this act, and at each annual election thereafter, there shall be elected two aldermen and one assessor for each ward, each of whom shall be an actual resident of the ward in which he is elected.

Inspectors of election.

§ 7. The aldermen of each ward, or such persons as the common council shall for that purpose appoint, shall be inspectors of such election after the first ; such inspectors shall have the same powers and authority as the inspectors of a general state election.

Ballot.

§ 8. The electors shall vote by ballot, and each person offering to vote, shall deliver his ballot, so folded as to conceal

the contents, to one of the inspectors, in the presence of the board.

§ 9. The ballot shall be a paper ticket, which shall contain, written or printed, or partly written and partly printed, the names of the persons for whom the elector intends to vote, and shall designate the office to which each person so named is intended by him to be chosen; but no ballot shall contain a greater number of names of persons, as designated to any office, than there are persons to be chosen to fill such office. How to be made.

§ 10. The polls of such election shall be opened at nine o'clock in the forenoon, and continue open until four o'clock in the afternoon of the same day, and no longer. Poll lists shall be kept in the same manner, as nearly as may be, as is provided by law for keeping poll lists at the general state election. Polls.

§ 11. Every person voting at such election, shall be an actual resident of the ward in which he so votes, and shall, if required by any person qualified to vote thereat, before he is permitted to vote, take the following oath: "You do swear (or affirm) that you are a citizen of the United States, of the age of twenty-one years; that you have been an inhabitant of this state for one year next preceeding this election, and for the last six months a resident of this county, that you are now a resident of this ward, and that you have not voted at this election." If the person be a colored man, he shall, (if required as aforesaid,) before he is permitted to vote, take the following oath: "You do swear (or affirm) that you are of the age of twenty-one years; that for three years you have been a citizen of this state; that you have been an inhabitant of this state for one year next preceding this election, and during that time have been and now are seised and possessed of a freehold estate of the value of two hundred and fifty dollars, over and above all debts and incumbrances charged thereon, and have been actually rated and paid a tax thereon; that you have been for the last six months a resident of this county; that you now are a resident of this ward, and that you have not voted at this election." Qualification of voters.

§ 12. After the poll of any such election is closed, the inspectors holding the same in each of said wards, shall on the same or next day, canvass the votes given at such election. The canvass shall be public, and shall commence by a comparison of the poll lists, and a correction of any mistakes that may be found therein, until they shall be found or made to agree. The ballots shall be counted unopened, except so far as to ascertain that each ballot is single, and if two or more ballots shall be found so folded as to present the appearance of single ballot, they shall be destroyed. Canvass.

Excess of ballots to be destroyed.

§ 13. If the ballots shall be found to exceed in number the whole number of votes on the poll lists, they shall be replaced in the box, and one of the inspectors shall publicly draw out and destroy so many ballots unopened as shall be equal to such excess. The ballots and poll lists being found or made to agree, the inspectors holding such election shall then proceed to canvass and estimate the votes.

Certificate of election.

§ 14. The canvass being completed, a statement of the result shall be drawn up in writing by the inspectors, which they shall certify to be correct, and subscribe with their names, and file the same with the clerk of said city, on the same or next day after the canvass is completed. The inspectors of each ward shall severally determine and certify who are by the greatest number of votes elected aldermen and assessors of their respective wards.

Privilege of electors.

§ 15. No person entitled to vote at any election held under this act, shall be arrested on civil process within said city on the day on which said election is held.

First election

§ 16. The trustees of the village of Buffalo, for the time being, shall appoint the inspectors of the first election to be held under this act. Such election shall be held and conducted, and the votes given thereat, canvassed by the said inspectors, and the result determined in the manner herein before provided. The said trustees shall also appoint the time and place of holding such first election, which time shall be some day after the passage of this act, and before the first day of June next.

Vacancies.

§ 17. Vacancies in the office of alderman occurring in any manner, may be filled at a special election, called and appointed by the common council, and conducted in the same manner as an annual election. Vacancies in all other offices shall be filled by appointment by the common council. All appointments to fill a vacancy in an elective office under this act, and all appointments of mayor, clerk, treasurer, attorney for the city, police constables, collectors, street commissioners, shall be by warrant under the corporate seal, signed by the mayor, or presiding officer of the common council and clerk. In case of a failure to elect aldermen at an annual election, or if from any cause there shall be no aldermen, the clerk shall appoint the time and places for holding a special election, and appoint the inspectors. All officers appointed or elected to any office, under or by virtue of this act, shall be appointed or elected annually, and except to fill a vacancy, shall hold their respective offices for one year, and until others are chosen, and have taken the oath of office.

Police constables.

§ 18. The common council shall appoint as many police constables as they shall think proper, not exceeding one in each

ward; who shall not have power to serve any civil process out of the limits of said city (except in cases of persons fleeing from said city,) and to commit on execution where the defendant shall have been arrested within said city.

§ 19. The mayor and aldermen of said city shall constitute the common council of said city. The common council shall meet at such places and times, as they shall by resolution direct, or as the mayor, or in his absence, any two of the aldermen shall appoint. The mayor when present, shall preside at all meetings of the common council, and shall have only a casting vote. In his absence any one of the aldermen may be appointed to preside. A majority of the persons elected as aldermen shall constitute a quorum.

§ 20. The common council shall meet annually (after the year eighteen hundred and thirty-two,) on the second Tuesday of March in each year, (and in the year eighteen hundred and thirty-two, on the day following the election,) and by ballot, appoint a mayor, clerk, treasurer, attorney for the city, street commissioner, police constables, clerk of the market, one or more collectors, one or more pound masters, porters, carriers, cartmen, packers, beadles, bellmen, sextons, common criers, scavengers, measurers, surveyors, weighers, sealers of weights and measures, and gaugers. If for any cause the officers above named are not appointed on said second Tuesday of March, or the day after the election in the year eighteen hundred and thirty-two, the common council may adjourn from day to day, until such appointments are made, and no alderman shall be appointed to the office of mayor.

§ 21. If any inhabitant of said city, elected to any office in pursuance of this act, shall refuse or neglect to accept such office, and take and subscribe the oath of office, prescribed in the sixth article of the constitution, for five days after personal notice in writing from the clerk, of his election, he shall forfeit the sum of ten dollars.

§ 22. Every person chosen or appointed to any executive, judicial or administrative office under this act, shall, before he enter on the duties of his office, take and subscribe, before some justice of the peace, or commissioner of deeds, the oath of office prescribed in the sixth article of the constitution of this state, and file the same duly certified by the officer before whom it was taken, with the clerk of the city.

§ 23. The treasurer, street commissioner, and collector or collectors of said city, shall severally, before they enter on the duties of their respective offices, execute a bond to the city of Buffalo, in such sum, and with such sureties as the common council shall approve, conditioned that they shall faithfully execute the duties of their respective offices, and account for,

and pay over all moneys received by them respectively ; which bonds, with the approval of the common council thereon certified by the clerk, shall be filed with the clerk of the city.

Constables to execute bond with sureties.

§ 24. Every person appointed to the office of constable in said city, shall, before he enters on the duties of his office, with two or more sureties, to be approved by the common council, execute in the presence of the clerk of the city, an instrument in writing by which such constable and sureties shall jointly and severally agree to pay to each and every person who may be entitled thereto, all such sums of money as the said constable may become liable to pay, by reason or on account of any execution or distress warrant which shall be delivered to him for collection. The clerk of the city shall certify the approval of the common council on such instrument, and file the same ; and a copy of such instrument, certified by the clerk, under the corporate seal, shall be presumptive evidence in all courts of the execution thereof by such constable and his sureties. All actions on any such instrument, shall be prosecuted within two years after the expiration of the year for which the constable named therein shall have been elected or appointed, and may be brought in the name of the person or persons entitled to the money to be collected by virtue of such instruments.

Warrant on treasurer.

§ 25. The treasurer shall receive all monies belonging to the city, and keep an accurate account of all receipts and expenditures, in such a manner as the common council shall direct. All moneys shall be drawn from the treasury in pursuance of an order of the common council, by warrants signed by the mayor or presiding officer of the council, and countersigned by the clerk. Such warrants shall specify for what purpose the amount specified therein is to be paid ; and the clerk shall keep an accurate account of all orders drawn on the treasury, in a book to be provided for that purpose. The treasurer shall exhibit to the common council, at least fifteen days before the annual election in each year, a full account of all receipts and expenditures, after the date of his last annual report, and also of the state of the treasury ; which account shall be filed in the office of the clerk.

Statement to be published annually.

§ 26. It shall be the duty of the common council, at least ten days before the annual election held under this act, in each year, to cause to be published in two or more of the public newspapers in said city, a full and correct statement in detail of the receipts and expenditures by the said common council for the contingent expenses of said city, from the date of the last annual report published in pursuance of this section, to the date of their said reports, and also a distinct statement of the whole amount of money assessed, received and expended, for making and repairing roads, highways and bridges in

said city for the same period ; together with such other information, in their power to furnish, as may be necessary to a full understanding of the financial concerns of said city.

§ 27. The clerk shall keep the corporate seal, and all the papers belonging to said city, and make a record of the proceedings of the common council, at whose meetings it shall be his duty to attend ; and copies of all papers duly filed in his office, and transcripts from the records of the proceedings of the common council, certified by him under the corporate seal, shall be evidence in all courts in like manner as if the original were produced.

Corporate seal.

§ 28. It shall be the duty of street commissioner to superintend the making of all public improvements ordered by the common council, and to make contracts for the work and materials which may be necessary for the same ; and he shall be the executive officer to carry into effect the ordinances of the common council, under the thirty-ninth, forty-first, forty-second, forty-seventh and forty-ninth sections of this act, and shall keep accurate accounts of all moneys expended by him, in the performance of any work, together with the cause of such expenditure ; and to render such account to the common council monthly.

Street commissioner's duty.

§ 29. The common council shall have the power to grant and allow to the mayor of said city, for the time being, in lieu of all fees and perquisites, an annual salary not exceeding two hundred and fifty dollars, payable out of the treasury. The treasurer, clerk, street commissioner, police constables, and collector or collectors, shall also be paid out of the treasury, such compensation for their services as the common council may deem reasonable.

Mayor's salary.

§ 30. If any person having been an officer in said city, shall not within ten days after notification and request, deliver to his successor in office, all the property, papers and effects of every description, in his possession, belonging to the said city or appertaining to the office he held, he shall forfeit and pay for the use of the city, one hundred dollars, besides all damages caused by his neglect or refusal so to deliver.

Penalty.

§ 31. The common council shall hold stated meetings, and the mayor or any two aldermen may call special meetings by notice to each of the members of said council, served personally or left at his usual place of abode. Petitions and remonstrances may be presented to the common council. The common council shall have the management and control of the finances, and of all the property, real and personal, belonging to the corporation, and shall have power within said city, to make, establish, publish, alter, modify, amend and repeal or-

Meetings of common council.

dinances, rules, regulations and by-laws for the following purposes:

Police regulations.

1. To prevent all obstructions in the waters which are public highways in said city.
2. To prevent and punish forestalling and regrating, and to prevent and restrain every kind of fraudulent device and practice.
3. To restrain and prohibit all descriptions of gaming and fraudulent devices in said city. And all playing of cards, dice or other games of chance, with or without betting, in any grocery, shop or store.
4. To prohibit the selling or giving away any ardent spirits by any store-keeper, trader or grocer, to be drank in the shop, store, grocery, cut-house, yard or garden, owned or occupied by the person selling or giving away the same, except by inn-keepers duly licensed.
5. To forbid the selling or giving away of ardent spirits or other intoxicating liquors, to any child, apprentice or servant, without the consent of his or her parent, guardian, master or mistress, or to any Indian.
6. To regulate or prohibit the exhibitions of common showmen, and of shows of every kind, or the exhibitions of any natural or artificial curiosities, caravans, circusses or theatrical performances.
7. To prevent any riot, or noise, disturbance or disorderly assemblages.
8. To suppress and restrain disorderly houses and groceries, houses of ill-fame, billiard tables, nine or ten-pin alleys, or tables and ball alleys, and to authorise the destruction and demolition of all instruments and devices used for the purpose of gaming.
9. To compel the owner or occupant of any grocery, cellar, tallow-chandler's shop, soap-factory, tannery, stable, barn, privy, sewer, or other unwholesome or nauseous house or place, to cleanse, remove or abate the same, from time to time, as often as may be necessary for the health, comfort and convenience of the inhabitants of the said city.
10. To direct the location and direction of all slaughter-houses, markets, and houses for storing powder.
11. To regulate the keeping and conveying of gun-powder and other combustible and dangerous materials, and the use of candles and lights in barns and stables.
12. To prevent horse-racing, immoderate riding or driving in the streets, and to authorise persons immoderately riding or driving as aforesaid, to be stopped by any person.
13. To prevent the incumbering of the streets, side-walks, lanes, alleys, wharves and docks, with carriages, carts, sleighs, sleds, wheel-barrows, boxes, lumber, timber, fire wood, or any other substance or materials whatsoever.

14. To regulate and determine the times and places of bathing and swimming, in the canals, creeks, harbors, and other waters in said city.

15. To restrain and punish vagrants, mendicants, street beggars and common prostitutes.

16. To restrain and regulate the running at large of cattle, horses, swine, sheep, goats and geese, and to authorise the distraining, impounding, and sale of the same for the penalty incurred, and costs of proceedings.

17. To prevent the running at large of dogs, and to authorise the destruction of the same, when at large contrary to the ordinance.

18. To prohibit any person from bringing, depositing, or having within the limits of said city, any dead carcass, or other unwholesome substance; and to require the removal or destruction by any person who shall have upon or near his premises, any such substance, or any putrid or unsound beef, pork, fish, hides or skins of any kind; and on his default to authorise the removal or destruction thereof by some officer of said city.

19. To prohibit the rolling of hoops, playing at ball, or flying of kites, or any other amusement or practice, having a tendency to annoy persons passing in the streets and on the side-walks in said city, or to frighten teams and horses within the same.

20. To compel all persons to keep the snow, ice and dirt from the side-walks in front of the premises owned or occupied by them.

21. To prevent the ringing of bells, blowing of horns and bugles, and crying of goods and other things within the limits of said city.

22. To abate and remove nuisances.

23. To regulate and restrain runners for boats and stages.

24. To survey the boundaries of said city.

25. To regulate the burial of the dead.

26. To direct the returning and keeping bills of mortality, and to impose penalties on physicians, sextons and others, for any default in the premises.

27. To regulate guaging, the place and manner of selling and weighing hay, of selling pickled and other fish, and of selling and measuring of wood, lime and coal, and to appoint suitable persons to superintend and conduct the same.

28. To appoint watchmen, and prescribe their powers and duties.

29. To regulate cartmen and cartage.

30. To regulate the police of said city.

31. To regulate the quality of bread, and to provide for the seizure or forfeiture of bread baked contrary thereto.

32. To establish, make and regulate public pumps, wells, cisterns and reservoirs, and to prevent the unnecessary waste of water.

33. To establish and regulate public pounds.

Duties of officers.

§ 32. The common council shall have power from time to time to prescribe the duties of all officers and persons appointed by them to any office or place whatever, subject to the provisions of this act; and may remove all such officers and persons at pleasure.

By-laws, ordinances, &c.

§ 33. The common council may make, publish, ordain, amend and repeal all such ordinances, by-laws and police regulations, not contrary to the laws of this state, for the good government and order of said city, and the trade and commerce thereof, and as may be necessary to carry into effect the powers given to said council by this act; and enforce observance to all rules, ordinances, by-laws and police regulations made in pursuance of this act, by imposing penalties on any person violating the same, not exceeding twenty-five dollars for any one offence, to be recovered with costs, in a action of debt in any court having cognizance thereof; or by indictment for misdemeanor upon the complaint of the common council. Every such ordinance or by-law, imposing any penalty or forfeiture for a violation of its provisions, shall, after the passage thereof, be published for three weeks successively in the corporation newspaper, printed and published in said city, and proof of such publication, by the affidavit of the printer or publisher of said newspaper, taken before any officer authorised to administer oaths, and filed with the clerk of the city, or any other competent proof of such publication, shall be conclusive evidence of the legal publication and promulgation of such ordinance or by-law in all courts and places.

Newspapers.

§ 34. The common council at their annual meeting on the second Tuesday in March, in each year after eighteen hundred and thirty-two, and at their first meeting in that year, or within ten days thereafter, shall designate one public newspaper printed in said city, in which shall be published all ordinances and other proceedings and matters required in any case by this act, or the by-laws and ordinances of the common council, to be published in a public newspaper.

Penalties how to be recovered.

§ 35. All actions brought to recover any penalty or forfeiture incurred under this act, or the ordinances, by-laws or police regulations made in pursuance of it, shall be brought in the corporate name; and in any such action it shall be lawful to declare generally in debt for such penalty or forfeiture, stating the section of this act or the by-law or ordinance under which the penalty is claimed, and to give the special matter in evidence; and the defendant may plead the general issue, and give the special matter in evidence. The first process in any

such action shall be by warrant, and execution may be issued thereon immediately on the rendition of judgment. If the defendant in any such action have no goods or chattels, lands or tenements, whereof the judgment can be collected, the execution shall require the defendant to be imprisoned in close custody in the jail of Erie county, for a term not exceeding thirty days. All expenses incurred in prosecuting for the recovery of any penalty or forfeiture, shall be defrayed by the corporation; and all penalties and forfeitures when collected, shall be paid to the treasurer for the use of the city.

§ 36. No person shall be an incompetent judge, justice, ^{Witnessed,} witness, or juror, by reason of his being an inhabitant or freeholder in the city of Buffalo, in any action or proceeding in which the said city is a party or interested. ^{Itc.}

§ 37. The mayor of said city shall, by virtue of his office, have and execute the like powers in said city in criminal cases as are given by law to justices of the peace in the several towns in this state, and he shall also possess and exercise the same powers in the courts of oyer and terminer and general sessions of the peace in the county of Erie, as are by law exercised by the judges of the county courts of the said county. ^{Mayor ex officio a justice of the peace.}

§ 38. The common council shall have power to cause a sum in each year, not exceeding eight thousand dollars, to be raised by tax, to defray the expenses of lighting the streets, supporting a night watch, and making and repairing roads, highways and bridges in said city, and to defray the contingent and other expenses of said city. The taxes assessed and levied in pursuance of this section, shall, except as otherwise herein directed, be assessed and rated by the said council, upon or among the owners of the estates, real and personal in said city, (according to the then last assessment roll made by the assessors of said city,) in the same manner and proportion, as nearly as may be, as taxes in and for the county of Erie are rated and assessed; and in the assessment roll made in pursuance of this section, it shall be the duty of the common council to set down and describe briefly the real estate and the amount of the personal estate on or in respect of which any assessment or tax is imposed or assessed. And no person or property exempt by law from assessments to work on highways in towns, shall be assessed or taxed for making and repairing roads, highways and bridges. In the assessment roll made under this section, all persons who would be liable by law to be assessed to work on highways, if they resided in any of the towns in this state, shall be enumerated and may be taxed by the said common council, a sum not exceeding one dollar, as a poll tax, for making and repairing roads, highways and bridges. Said assessment roll shall, when completed and corrected, be filed with the clerk of the city. All taxes and assessments imposed, ^{Amount to be raised by tax.}

rated and assessed by the said common council, in pursuance of this section, shall be collected by the collector or collectors of said city, in the same manner and with the same power and authority as taxes in and for the county of Erie are collected by the collectors of the several towns, by virtue of a warrant or warrants under the corporate seal, signed by the mayor, or by suit in the corporate name, with interest and costs. The assessment roll filed with the clerk, shall in all cases be evidence on the part of the corporation; and all taxes and assessments imposed or assessed on, or in respect of any real estate as aforesaid, shall be a lien, on filing the roll with the clerk of the city, on such real estate; and in case such taxes and assessments are not paid, and no personal property can be found by the collector or collectors, out of which to satisfy and collect the same by distress and sale, the common council may cause such real estate to be sold for the payment and collection of such taxes and assessments as aforesaid, together with the expenses of the sale, in the manner and with the effect, and subject to the provisions specified in the forty-third section of this act, relative to the sales of real estate for the non-payment of assessments in that section mentioned; but no such real estate shall be sold as aforesaid, except within one year from the time of the filing of the assessment roll as aforesaid. All taxes and sums of money raised and collected in pursuance or by virtue of this section, shall be paid to the treasurer of the city. Any person who may be assessed to raise the amount for making roads, highways and bridges, may, at his option, discharge the same in labor, at the rate of one day for each fifty cents he may be assessed for such purposes; provided such person shall, within ten days after he shall have been first called upon by the collector to pay such tax, deliver to the collector a receipt from the street commissioner, specifying that he has labored upon the highways to the amount of such assessment, at the rate above specified. The street commissioner, whenever requested by any person assessed, for making highways, roads and bridges, shall designate a time when, and not exceeding three days thereafter, and place where such person is to commence labor on the highways, under the direction of such commissioner, in discharge of such assessment: and upon the performance of such labor according to such designation, at the rate of eight hours for each day, the commissioner shall give such person a receipt therefor.

Highways.

§ 39. The common council shall be commissioners of highways in and for said city, and shall (subject to the provisions of this act) possess the powers and perform the duties, and be subject to the liabilities of commissioners of highways in towns. They shall have power to regulate, repair, amend, alter and clean the streets, alleys, highways, bridges, side and cross-

walks, drains, sewers, wharves, piers, docks and slips, in said city, and to prevent the incumbering of the same in any manner, and to protect the same from encroachments and injury. They shall also have power to direct and regulate the planting, rearing and preserving of ornamental trees in the streets of said city.

§ 40. All those portions of the big and little Buffalo creeks ^{Buffalo creeks.} within the bounds of said city, be and are hereby declared to be public highways.

§ 41. The common council shall have power to lay out, ^{Streets, alleys, &c. to be laid out.} make and open streets, alleys, lanes, highways, wharves and slips, in said city, and to alter, widen, contract or discontinue the same; but no building exceeding the value of one thousand dollars shall be removed in whole or in part, without the consent of the owner. They shall cause all streets, alleys, lanes or highways, laid out by them, to be surveyed, described and recorded, in a book to be kept by the clerk, and the same when opened and made, shall be public highways. Whenever any street, alley, lane, highway, wharf or slip is laid out, altered or widened by virtue of this section, the common council shall give notice of their intention to take and appropriate the land necessary for the same, to the owner thereof, his agent or legal representatives, if known or residing in this state, or if not known, and residing out of the state, then by publishing said notice for four weeks in one or more of the public papers in said city; and the mayor, or any two aldermen, shall have power, by a precept under their seals, to command any constable of said city, to impanel and return a jury of twelve reputable freeholders of said city, not interested nor of kin to any person interested in the premises, to appear before him or them, within ten days from the date of such precept, to ascertain and assess the damages and recompence due the owner or owners of such land, and at the same time to determine what persons will be benefitted by such improvement, and to assess the expenses thereof, on the real estate of the persons benefitted, in proportion, as nearly as may be, to the benefit resulting to each; and also to summon the owner of such land, his agent or representatives, by written notice, served personally, or left at his or their usual place of abode, to appear before him or them, on the day specified in said precept. The jury shall be sworn by any justice of the peace in said city, faithfully and impartially to execute their duty, in making such assessments, according to the best of their ability. The jury shall view the premises, and in their discretion, receive any legal evidence, and may, if necessary, adjourn from day to day. Such jury shall determine and award to the owner or owners of such land, such damages as they shall judge such owner or owners to sustain in consequence of such street, lane, alley, highway,

wharf or slip, after taking into consideration and making due allowance for any benefit which said owner or owners may derive from such improvement. The said jury shall also at the same time, assess and apportion the expenses of such improvement on the real estate benefitted thereby, as nearly as may be, in proportion to the benefits resulting therefrom; and shall describe the real estate on which any assessment is made under this section, in the same manner as is provided in the thirty-eighth section of this act, in relation to the assessment of taxes. If there be any building on any land taken for such improvement, the owner thereof shall have ten days, or such time as the common council may allow, after the final assessment of the jury is returned to, and confirmed by, the common council, to remove the same; and in case such owner removes such building, the value thereof to the owner to remove, shall be deducted from the amount of damages awarded to the owner thereof, and such value shall be at the time of the assessment, determined by the jury. The determination and assessment of the jury shall be returned in writing, signed by the jury, to the common council. The common council, after such determination and assessment of the jury is returned to them, as aforesaid, shall give two weeks' notice, in the corporation newspaper printed in said city, that such determination and assessment of the jury will, on a day to be specified in said notice, be confirmed by the common council, unless objections by some person interested are made thereto. All objections to any such determination and assessment as aforesaid, shall be briefly stated in writing, and filed with the clerk. If no objections are made as aforesaid, the said determination and assessment of the jury shall be confirmed by the common council. If objections are made as aforesaid, any person interested may be heard before the common council, touching the said determination and assessment of the jury, on the day specified in the aforesaid notice, or on such other day or days as the common council shall for that purpose appoint; and the said common council, on consideration of the objections made, shall have power in their discretion, to confirm such determination and assessment of the jury, or the same, and direct a new jury to be summoned for the purposes, and in the manner herein provided; and the determination and assessment of such second jury, shall, when completed, be returned to and confirmed as of course, by the common council, and filed with the clerk, and shall be final and conclusive on all persons interested. But the said common council shall not have power to discontinue any street, road or highway in said city, without the consent in writing of all persons owning land adjoining such street, road or highway.

§ 42. The common council shall have power to cause any street, alley, lane, road or highway in said city, to be graded, levelled, paved, re-paved or gravelled, and to cause cross and side-walks, drains, sewers, and aqueducts to be constructed and made in said city; and to cause any side-walks or drains, sewers and aqueducts, to be re-laid, amended and repaired, and to cause the expenses of all improvements, except side-walks, made or directed under this section, to be assessed upon all the real estate in said city, in proportion to the benefits resulting thereto, as nearly as may be. The common council shall determine the amount to be assessed for all improvements made or directed under this section, except side-walks, and shall appoint five reputable freeholders of said city, to make such assessment. The assessors shall be sworn before a justice of the peace in said city, faithfully and impartially to execute their duty as such assessors, according to the best of their ability. They shall assess the amount directed by the common council to be assessed for any such improvement, on the real estate deemed by them to be benefitted thereby, in proportion to the benefit resulting thereto, as nearly as may be: and the said assessors shall briefly describe in the assessment roll to be made by them, the real estate on, or in respect of which any assessment is made under this section. When the assessment is completed they shall give the like notice, and have the same power to make corrections as in the case of assessment of taxes. They shall deliver a corrected copy of the assessment roll to the clerk of the city, to be filed. Any person interested may appeal to the common council for the correction of the assessment. Such appeal shall be in writing, and shall be delivered to the clerk or presiding officer of the common council within twenty days after the corrected copy of the assessment roll is filed with the clerk. In case of appeal, the common council shall appoint a time within ten days thereafter, for the hearing of those who are interested, and shall cause a notice to be posted for five days in some convenient public place, designating the time and place and object of hearing; and they may adjourn said hearing from time to time as may be necessary; and the common council shall, in case of appeal as aforesaid, have power in their discretion, to confirm such assessment, or to annul the same and direct a new assessment, which shall be final and conclusive on all parties interested, to be made in the manner herein before directed, by five other assessors, to be appointed as aforesaid, by the said common council. If the first assessment in any case under this, or the preceding section, proves insufficient, the common council may cause another to be made, in the same manner, or if too large an amount shall at any time be raised, the excess shall be refunded rateably to those by whom it was paid.

Assessments
how to be
made.

§ 43. All assessments for improvements authorised by the forty-first and forty-second sections of this act, shall be made upon the real estate, and be collected by or paid to the collector or collectors of said city, except as herein otherwise directed. A corrected copy of the assessment roll shall in all cases, authorised by the said forty-first and forty-second sections, be filed in the office of the clerk of the city; and the assessments shall be a lien on the premises assessed, for one year only, after the final corrected copy of the assessment roll is filed as aforesaid. In case of non-payment, the premises may be sold at any time within the year from the time of the filing of the said assessment roll. Before any such sale, an order shall be made by the common council, which shall be entered at large in the records of the city, kept by the clerk, directing the attorney of the city to sell, and particularly describing the premises to be sold, and the assessment for which the sale is to be made; a copy of which order shall be delivered to the said attorney. The said attorney shall then advertise the premises to be sold, in the manner, and for the time required in case of sales of real estate on execution, and the sale shall be conducted in the same manner. The proceedings may be stopped at any time before sale, by any person, by paying to the said attorney the amount of the assessment, interest and expenses of advertising. All sales in such cases shall be made for the shortest period for which any person will take the premises and pay the assessment, interest and expenses. Certificates of the sale shall be made and subscribed by the said attorney, one of which shall be filed by him within ten days after the day of sale, in the office of the clerk of the city, and in the office of the clerk of Erie county, and shall contain a description of the property and the term for which it was sold, and state the amount of the assessment, interest and expenses for which the sale was made, and the time at which the right to redeem will expire. If the proceedings are stopped before a sale is made, the attorney may include one dollar, and no more, in the expenses for his fees. If the premises are sold, the attorney may include two dollars in the amount of expenses for his fees, and no more. The right of redemption, in all cases, of such sales in the same manner and to the same extent, shall exist to the owner and his creditors, as is allowed by law in the case of sales of real estate by virtue of an execution. The money, in case of redemption, may be paid to the purchaser, or for him, to the clerk of the city. In case of no redemption, or in case of redemption by the creditor or creditors, the common council shall make to the purchaser or his legal representatives, or the person entitled thereto, a declaration in writing, under the corporate seal, signed by the mayor, and attested by the clerk, containing a description of the premises, the fact of

assessment, advertisement and sale, and the period for which the premises were sold ; which declaration shall be evidence of a right to the use and occupancy of the premises for the said period, to be computed from the expiration of fifteen months after the day of sale. All buildings put upon the premises in the exercise of such right of occupancy, during the period, may be removed at or before the expiration thereof.

§ 44. Any person interested, may appeal from any order of ^{Appeals} the common council, for laying out, opening, making, altering or widening any street, alley, lane, highway, wharf or slip, to the court of common pleas of the county of Erie, by notice in writing, delivered to the mayor or clerk of the city, at any time before the expiration of twenty days after the passage of the ordinance therefor by the common council. The only ground of appeal shall be the want of conformity in the proceedings to this act. The propriety or utility of the street, alley, lane, highway, wharf or slip, or other improvements, or the correctness of the assessments of damages, if made in conformity to this act, shall not constitute a ground of appeal. In case of appeal, the common council shall make return within twenty days after notice thereof ; and the court of common pleas shall, at the next term, after the return which shall be filed in the office of the clerk of the county, proceed to hear and determine the appeal, and shall confirm or annul the proceedings of the common council.

§ 45. The land required to be taken for the making, open- ^{Damages} ing or widening of any street, alley, lane, highway, wharf or slip, in said city, shall not be so taken and appropriated, by the common council, until the damages therefor, assessed and awarded to any owner thereof, under this act, shall be paid or tendered to such owner or his agent, or legal representatives ; or in case such owner or his agent, or legal representatives cannot be found in said city, shall be deposited to his or their credit, or for his or their use, in one of the banks of said city ; and then and in such cases, and not before, such land may be taken and appropriated by the common council for the purposes required, in making such improvements, and such streets, alleys, lanes, highways, wharves or slips, may be made and opened.

§ 46. Where any known owner residing in said city or else- ^{Rights of in-} where, shall be an infant, and proceedings shall be had under the forty-first section of this act, the court of common pleas of Erie county, or any judge thereof, at his chambers, may, upon the application of the common council, or such infant, or his next friend, appoint a guardian for such infant, taking security from such guardian for the faithful execution of his trust ; and all notices and summonses required by said section, shall

be served on such guardian. It shall be the duty of such guardian to see that the rights of such infants are protected.

Side walks.

§ 47. All owners or occupants, in front of whose premises the common council shall direct side-walks to be constructed or repaired, shall make or repair such side-walks, at their own costs and charges; but if not done in the manner and of the materials, and within the time prescribed by the common council, the said council may cause them to be constructed, and assess the expenses thereof upon such lots respectively, and collect the same in the manner directed by the forty-third section of this act. And such assessment shall be a lien upon such lot, in like manner as assessments under the said forty-third section.

Notice of improvements to be given.

§ 48. No ordinance shall be passed by the common council directing the laying out, making, widening, contracting, discontinuing or altering any street, alley, road, highway, wharf or slip, or directing the paving or flagging of any street, alley, road or highway, or the construction or making of any sewer or aqueduct in said city, unless two weeks' previous notice shall be given by the said common council, in the corporation newspaper printed in said city, that an application is pending before said council, for the laying out, making, widening, altering, contracting, discontinuing, paving or flagging such street, alley, road, highway, wharf or slip, sewer or aqueduct, which notice shall briefly describe the nature and object of the application, and specify at what time it will be finally acted upon by the common council.

Public squares.

§ 49. The common council shall have power to order the grading, paving, gravelling, raising, closing, fencing, amending, cleansing and protecting any public square or area, now or hereafter laid out in said city; and to improve the same by the construction of walks, and the rearing and protecting of ornamental trees therein; and to cause such part of the expenses thereof as they shall deem just, to be assessed and collected in the manner prescribed in the forty-second and forty-third sections of this act, for assessing and collecting expenses of improvements mentioned in those sections; and to cause the sale of any real estate, on which such expenses are assessed, to be sold as provided in said forty-second and forty-third sections. But nothing herein shall empower the said common council to divert or obstruct the interest of any individual, in or to any such square or area.

Markets.

§ 50. The common council shall have power to establish and regulate a market or markets in said city, and to restrain and regulate the sale of fresh meat and vegetables in said city, to restrain and punish the forestalling of poultry, fruits and eggs, and to license, under the hand and seal of the mayor, annually, such and so many-butchers as they shall deem necessary

proper; and to revoke such license for any infraction of the by-laws and ordinances of the common council, or other mal-conduct of such butchers, in the course of their trade.

§51. The common council, for the purpose of guarding against the calamities of fire, shall have power to prescribe limits in said city, within which wooden buildings shall not be erected or placed, without the permission of said common council, and to direct that all or any buildings within the limits prescribed, shall be made or constructed of stone or brick, with partition walls, fire proof roofs, and brick or stone cornices and eave troughs, under such penalties as may be prescribed by the common council, not exceeding one hundred dollars for any one offence; and the farther sum of twenty-five dollars for each and every week any building so prohibited, shall be continued. Fire proof buildings.

§ 52. The common council shall have power to regulate the construction of chimneys, so as to admit chimney sweeps, and to compel the sweeping and cleaning of chimneys, and to prevent chimney sweeps from sweeping unless licensed as they shall direct; to prevent the dangerous construction and condition of chimneys, fire-places, hearths, stoves, stove-pipes, ovens, boilers and apparatus used in any building or manufactory, and to cause the same to be removed, or placed in a safe and secure condition, when considered dangerous; to prevent the deposit of ashes in unsafe places, and to appoint one or more officers to enter into all buildings and enclosures to discover whether the same are in a dangerous state, and to cause such as may be dangerous to be put in safe condition. To require the inhabitants of said city to provide so many fire buckets, and in such manner and time as they shall prescribe, and to regulate the use of them in times of fire; and to regulate and prevent the carrying on of manufactories dangerous in causing or promoting fires, and to prevent the use of fire-works and fire-arms in the streets; to compel the owners and occupants of houses and other buildings to have scuttles in the roofs, and stairs and ladders leading to the same; to authorise the mayor, aldermen, fire-wardens, or other officers of said city, to keep away from the vicinity of any fire, all idle and suspicious persons, and to compel all officers of said city, and other persons, to aid in the extinguishment of fires, and in the preservation of property exposed to danger thereat, and generally to establish such regulations for the prevention or extinguishment of fires as the common council may deem expedient. Chimneys.

§ 53. The common council shall procure fire-engines, and other apparatus used for the extinguishment of fires, and have the charge and control of the same, and provide fit and secure engine houses, and other places for keeping and preserving the same; and shall have power to organize fire, hook, hose, bag, Fire engines, &c.

ladder and axe companies; to appoint during their pleasure, a chief engineer, and two assistant engineers of the fire department, and a competent number of able and reputable inhabitants of said city, firemen, to take the care and management of the engines, and other apparatus, and implements used or provided for the extinguishment of fires; to prescribe the duties of firemen, and to make rules and regulations for their government, and to impose such reasonable fines and forfeitures upon said firemen for a violation of the same, as the said council may deem proper. And for incapacity, neglect of duty, or misconduct, to remove them and appoint others in their places.

Fire wardens.

§ 54. The members of the common council shall be fire wardens, and shall have power to appoint such other fire wardens as they may deem necessary.

Firemen.

§ 55. The firemen appointed by virtue of this act, shall, during the term of their service as such, be exempt from serving on juries, in all courts, and in the militia, except in case of war, invasion or insurrection. The name of each person appointed a fireman shall be registered with the clerk of the city, and the evidence to entitle him to the exemption, as provided in this section, shall be the certificate of the clerk, made within a year in which the exemption is claimed.

Present firemen.

§ 56.. The present firemen of the village of Buffalo, shall be firemen of the city of Buffalo, subject to be removed by the common council, in like manner as other firemen of said city.

Privilege of those serving ten years.

§ 57. Every fireman, who shall have faithfully served as such, in said city or village of Buffalo, or both, for the term of ten years, shall be thereafter exempt from serving on juries, in all courts, or in the militia, except in case of war, invasion or insurrection; and the evidence to entitle such person to the exemption, as provided in this section, shall be a certificate, under the corporate seal, signed by the mayor and clerk.

Licenses to tavern-keepers, &c.

§ 58. The common council may authorise the mayor, or any other proper officer of the corporation, to grant licenses to tavern-keepers, grocers and keepers of ordinaries, or victualing-houses, to sell wine and liquor, in the manner prescribed by the Revised Statutes of this state, and may direct the manner of issuing, countersigning, and registering such licenses, and may fix the fee to be paid therefor, at any sum not less than five nor more than fifty dollars; and the sum to be paid to the mayor or other officer, for granting such license, not exceeding one dollar. The bonds to be taken on granting such licenses, shall be the same as are prescribed by the ninth title of the twentieth chapter of the first part of the Revised Statutes; they shall be filed; may be prosecuted, and the moneys collected shall be applied as directed in that title; and the persons receiving such licenses shall be in all respects subject to the provisions of the said title.

§ 59. The common council shall have power to pass such ordinances as they shall judge proper for regulating or restraining keepers of ordinaries, victualling-houses and houses where any of the articles or commodities hereinafter mentioned shall be sold, and to enforce observance thereto in the manner prescribed by the thirty-third section of this act. The common council shall also have power to grant license in their discretion to keepers of ordinaries, victualling-houses and houses where fruit, oysters, clams, meat, porter, ale, strong beer, cider, currant wine, cherry wine, soda water, metheglin, or any of them shall be sold, and to determine the sum to be paid for such license by each person applying under this section, which sum shall not be less than five dollars nor more than fifty dollars; and to require of the applicant a bond to the city of Buffalo in the penal sum of one hundred and twenty-five dollars, with such security or sureties as shall be approved by said council, conditioned that during the term for which his license shall be granted, he will not suffer his store, house, grocery or shop to become disorderly, and that he will not suffer any cock-fighting, gaming or playing with cards or dice, or keep any billiard table or other gaming table within the same, or in any out-house, yard or garden belonging thereto. All moneys received for licenses granted under this section shall be paid to the treasurer of the city of Buffalo for the use thereof, subject to the provisions of the last preceding section, and all moneys which shall be recovered as penalties or forfeitures for violating any of the provisions of this section, shall be paid to the treasurer of said city for the use thereof.

Ordinaries,
&c. to be re-
gulated.

§ 60. That the said common council shall be, and are hereby authorised to appoint annually three commissioners as a board of health for said city, and the mayor of the said city, or presiding officer of the common council, shall be president of said board; and the clerk of said city shall be clerk of said board, and shall keep minutes of the proceedings thereof. The said common council shall also, at their pleasure, appoint a health physician annually, and as often as the office shall become vacant, and may remove him at pleasure; whose duty it shall be to visit every sick person who may be reported to the board of health as hereinafter provided, and to report with all convenient speed his opinion of the sickness of said persons to the clerk of the said board of health, and it shall be the duty of said physician to visit and inspect at the request of the president of the said board, all boats and vessels running to or being at the wharves, landing places, or shores in said city, which are suspected of having on board any pestilential or infectious disease, and all stores or buildings which are suspected to contain unsound provisions, or damaged hides, or other articles, and to make report of the state of the same with all convenient speed to the clerk of the board of health.

Board of
health.

Vessels may
be removed.

§ 61. In case any boat or vessel shall be at or near any of the wharves, shores or landing places in said city, and the said board of health shall believe that such boat or vessel is dangerous to the inhabitants of the said city, in consequence of their bringing and spreading any pestilential or infectious disease among said inhabitants; or having just cause to suspect or believe, that if the said boat or vessel is suffered to remain at or near the said wharves, shores or landing places, it will be the cause of spreading among the inhabitants any pestilential or infectious disease; that it shall and may be lawful for the said board, by an order in writing, signed by the president for the time being, to order such boat or vessel to any distance from said wharves, shores or landing places, not exceeding three miles beyond the bounds of the city, within six hours after the delivery of such order to the owner, master or consignee of said boat or vessel. And if the master, owner or consignee to whom such order shall be delivered, shall neglect or refuse to comply therewith, the said president may enforce such removal, and said master, owner or consignee shall be considered guilty of misdemeanor, and on conviction, shall be fined a sum not exceeding two hundred and fifty dollars, and imprisoned not exceeding three months, in the jail of the county of Erie, by any court having cognizance thereof; the said fine when paid, to be applied by the said board to the support of the treasury of the city of Buffalo.

Physicians to
report in cer-
tain cases.

§ 62. Every person practising physic in the said city, who shall have a patient laboring under any malignant or yellow fever, or other infectious or pestilential disease, shall forthwith make report thereof, in writing, to the clerk of the said board of health; and for neglecting so to do, shall be considered guilty of misdemeanor, and liable to a fine of fifty dollars, to be sued for and recovered in an action of debt in any court having cognizance thereof, with costs for the use of the treasury of said city.

Non-resi-
dents.

§ 63. All persons in the said city, not being residents thereof, who shall be infected with any infectious or pestilential disease, and all things within said city, which, in the opinion of the said board shall be infected by or tainted with pestilential matter, and ought to be removed, so as not to endanger the health of the city, shall, by order of the said board of health, be removed to some proper place, not exceeding three miles beyond the bounds of said city, to be provided by the said board at the expense of said city; and the said board may order any furniture or wearing apparel to be destroyed, whenever they may judge it necessary for the health of the city.

Harbor mas-
ters.

§ 64. The said common council shall have power to appoint and remove at pleasure, one or more harbor masters in

said city, who shall have power, upon the application of the master, owner or consignee of any ship, boat or vessel in said city, to regulate and order all ships, boats and vessels, lying at any of the wharves, or landing places, or in any of the waters in said city, and to remove from time to time, such boats, ships or vessels, as are not employed in receiving or discharging their cargoes or passengers, to make room for such others as require to be more immediately accommodated, for the purpose of receiving or discharging their cargoes or passengers; and if any master or other person having charge of any such ship, boat, or vessel, shall refuse or neglect to obey the directions of such harbor master in the premises, he or they shall forfeit fifty dollars, to be recovered in an action of debt, with costs, for the use of the said city. The said harbor master shall recover from the master, owner or consignee of every boat, ship or vessel, adjudged by him to be in default, for his compensation in the premises, the sum of one dollar, if the ship, boat or vessel, so adjudged to be in default, is of the burden of twenty tons or upwards, and fifty cents, if under twenty tons.

§ 65. All the estate, real and personal, vested in, or belonging to, or held in trust, by the trustees of the village of Buffalo, at the time this act shall take effect as a law, shall be, and is hereby declared to be, vested in the city of Buffalo. City property

§ 66. All former acts and parts of acts, relative to the incorporation of the village of Buffalo, except the sixth section of the act passed April 11, 1826, entitled "An act to amend the act entitled 'An act to incorporate the village of Buffalo in the county of Erie,' passed April 7, 1822," are hereby repealed; and the power, right and authority contained in that section in favor of the trustees of the village of Buffalo, be and the same are hereby transferred as they then existed, to the common council of the city of Buffalo; but the repeal of said acts, shall not affect any act done, or right accrued or established, or any proceeding, suit or prosecution had or commenced, previous to the time when such repeal shall take effect; but every such act, right and proceeding, shall remain as valid and effectual, as if said acts had remained in force; and all the officers elected or appointed under or by virtue of the acts hereby repealed, shall continue in office until and including the day of the first election to be held under this act, unless the term for which they, or any of them, were elected or appointed, shall sooner expire. Repealing clause.

§ 67. This act shall take effect on the passage thereof, and the legislature may at any time alter, modify, or repeal the same. Act to take effect.